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November 30, 2022

VIA ECF

Honorable John P. Cronan
United States District Court Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Donohue, et al. v. Banks, et al.*, Docket No. 22-cv-8998 (JPC)

Dear Judge Cronan:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel, attorney for the Defendants in the above-referenced action, which concerns the pendency entitlements of eighteen students at the International Institute for the Brain (iBrain) for the 2022-2023 school year. I am submitting this status update on behalf of Defendants. Although I understand that the Court desired a joint status letter, Plaintiffs' counsel sought to include over three pages of legal argument, which was sent to me at nearly 7 pm tonight, and turn the letter into a legal brief rather than a status report. I did not think that was appropriate, especially since Plaintiffs' counsel and I had multiple conversations throughout the day in which we agreed that this letter would solely be a status update and not a legal brief. As this letter is only being submitted on behalf of Defendants, Plaintiffs' counsel is welcome to submit a letter on behalf of their clients if they wish to do so.

Since the date of the parties' last joint letter on November 16, 2022, the DOE has made significant additional payments of invoices with respect to the pendency entitlements of the student Plaintiffs.

The current status of payments for each respective student Plaintiff is as follows:

I. Implementation Pursuant to Pendency:

1) T.A.N.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;

- b. tuition has been paid through December 2022; and
- c. nursing has been paid through the end of October 2022.

2) M.B.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

3) J.B.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. the DOE is investigating to see if nursing documents have been received.

4) M.C.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

5) Z.C.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

6) A.D.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

7) O.F.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and

- c. nursing has been paid through the end of October 2022.

8) Y.M.

- a. transportation has been paid for July through October 2022;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

9) A.N.

- a. transportation has been paid for July through October 2022;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

10) D.O.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

11) R.N.

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

II. Implementation Pursuant to FOFD:

1) S.J.D. (FOFD dated 11/7/22)

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing has been paid through the end of October 2022.

2) N.A. (FOFD issued 10/20/2022)

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid through December 2022; and
- c. nursing is not applicable.

3) H.C. (FOFD dated 9/20/2022)

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid for the 2022 – 2023 school year; and
- c. nursing has been paid through the end of October 2022.

4) A.J.C.B. (FOFD issued 10/20/2022)

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid for the 2022 – 2023 school year; and
- c. nursing has been paid through the end of October 2022.

5) Y.N. (FOFD issued 10/20/2022)

- a. transportation has been paid for July through October 2022;
- b. tuition has been paid for the 2022 – 2023 school year; and
- c. nursing is not applicable.

6) A.R. (FOFD issued 10/4/2022)

- a. transportation payments are on hold as records showing in-person, physical attendance at iBRAIN are still outstanding;
- b. tuition has been paid for the 2022 – 2023 school year; and
- c. nursing is not applicable.

7) L.V.F. (FOFD issued 9/19/2022)

- a. transportation has been paid for July through October 2022;
- b. tuition has been paid for the 2022 – 2023 school year; and
- c. nursing has been paid through the end of October 2022.

Lastly, to the extent that tuition for the second half of the school year, commencing in January 2023, for the student Plaintiffs may be at issue, the DOE will pay such costs pursuant to the pendency entitlements of each of the respective student Plaintiffs, as the matters are still pending. The DOE will also pay any costs pursuant to any final Findings of Fact and Decision, to the extent that they are ordered by an impartial hearing officer, and the parent is the ultimate prevailing party. Going forward, Defendants request that any case that has gone to final decision, where full payment has been rendered, no longer will require status updates.

The main issue at this time is in-person attendance records that Your Honor directed Plaintiffs to provide to the DOE to the extent they are in the possession of Plaintiffs' counsel and/or

his clients. Of note, unlike the cases described above, the transportation payments that the DOE has been able to make thus far were not linked to the student's actual attendance per the wording of the respective student's pendency order/form. For the remainder of the students, the DOE maintains that such records are necessary in order to pay transportation costs for the student Plaintiffs' whose pendency orders/forms explicitly tie transportation payment to attendance.

As the parties are unable to work these issues out amongst themselves, we request a further conference to be held before Your Honor to determine the best path forward.

The Parties thank the Court for its consideration.

Respectfully,

s/ Jacquelyn Dainow

Jacquelyn Dainow

Assistant Corporation Counsel

cc: All counsel of record (via ECF)

The parties are hereby ordered to appear at 2:00 p.m. on December 8, 2022 for a status conference in Courtroom 12D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The purpose of that conference shall be to clarify what disagreements remain between the parties and to determine how best to proceed so as to expeditiously resolve them.

SO ORDERED

Date: December 1, 2022

New York, New York



JOHN P. CRONAN

United States District Judge